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Mr. GILPIN, for the defendant, then asked leave to amend the return so as to conform to the views of this Court.

Judge KANE said he would give the defendant a full hearing upon any motion his counsel would choose to present.

After the decision by the Court, the United States Marshal of the District took the prisoner in custody, conveyed him to Moyamensing Prison, and handed him over to the keepers.

Supreme Court of Pennsylvania,—August, 1855.[1]

Ex parte PASSMORE WILLIAMSON.

A writ of *habeas corpus* cannot issue out of a state court to inquire into the cause of a commitment for contempt by a court of the United States, by reason of any want of jurisdiction of the latter court in the original proceeding in the course of which the commitment was made.

After the decision in the foregoing case of *United States* vs. *Williamson* had been pronounced, and the defendant committed for contempt, his counsel applied to the chief justice of this court for a writ of habeas corpus it being alleged amongst other things that the District Court had had no jurisdiction of the original case.

The following opinion was delivered by

LEWIS, C. J.—This is an application for a writ of habeas corpus. It appears by the copies of the warrants annexed to the petition, that the prisoner is confined for a contempt of the District Court of the United States in refusing to make return to a writ of habeas corpus awarded by that court against him at the relation of John H. Wheeler.

The counsel of Mr. Williamson very frankly stated, in answer to an interrogatory on the subject, that they did not desire the useless formality of issuing a writ of habeas corpus, if, on view of the cause of detainer exhibited, I should be of opinion that the adjudication of the U. S. District Court was conclusive. The habeas corpus act does not require the writ to be granted in all cases whatever.

[1] Before LEWIS, C. J.

Whenever it appears upon the face of the petition, or, which is the same thing, by the detainer annexed to it and forming part of it, that the prisoner is "detained upon legal process, order or warrant for such matter or offences for which by the law the said prisoner is not bailable," the case is excepted out of the act; see act 18th Feb., 1785, sec. 1.

If the "process" be "legal" and the "offence" "not bailable," the judge is not authorized by the statute to discharge the prisoner. If not authorized to discharge, the law does not require the ridiculous formality of issuing the writ to bring the prisoner up, for the purpose of remanding him back to prison. The object, as appears from the preamble, is to relieve from "wrongful restraints." Where it appears from the party's own showing, that the restraint is *not* "wrongful" the writ should be refused. This is the settled construction of the English statute from which our act is taken. 3 Barn. & Ald. 420; 2 Chitty's R. 207; 3 Bl. Com. 132. The Supreme Court of the United States adopting the English construction, follows the same rule. 7 Wheat., 38; 3 Peters, 201. In like manner, notwithstanding the *letter* of the act, our own Supreme Court follows the rule of adhering to its *spirit* and *meaning*, and accordingly, where a case has been already heard, upon the same evidence, by another court, the writ will be granted or refused according to legal discretion. *Ex parte Lawrence*, 5 Bin. 304.

We come, therefore, at once to the cause of detainer. Is it a "legal process, order or warrant for an offence which by law is not bailable?" Mr. Justice Blackstone in *Brass Crosby's* case, 3 Wilson, 188, declared that "all courts are uncontrolled in matters of contempt. The *sole* adjudication of contempts, and the punishment thereof in any manner, belongs *exclusively*, and *without interfering*, to *each respective Court*. Infinite confusion and disorder would follow if courts could by writ of habeas corpus examine and determine the contempts of others. This power to commit, results from the first principles of justice; for if they have the power to decide they ought to have the power to punish." "It would occasion the utmost confusion if every court of this hall should have power to examine the commitments of the other courts of the hall for contempts; so that the judgment and commitment of each respective

court, *as to contempts, must be final and without control.*" 3 Wilson, 204. This doctrine was fully recognized by the Court of Common Pleas of England, in the case referred to. It has since been approved of in numerous other cases, in that country and in this.

In *ex parte Kearney*, 7 Wheaton, 38, it was affirmed by the Supreme Court of United States, in accordance with the decision in *Brass Crosby's* case, 3 Wilson, 188, that "when a court commits a party for contempt their adjudication is a conviction, and their commitment in consequence is execution." 7 Wheaton, 38; 5 Cond. R., 227. In the case last cited, it was also expressly decided that "a writ of habeas corpus was not deemed a proper remedy where a party was committed for a contempt by a court of competent jurisdiction, and that if granted, the court would not inquire into the cause of commitment." 7 Wheaton, 38. Many authorities to the same effect are cited by Chief Justice Cranch, in *Nugent's* case, 1 American Law Journal, (N. S.) 111.

But it is alleged that the District Court had no jurisdiction. It does not appear that its jurisdiction was questioned on the hearing before it. The act of Congress of 24th September, 1789, gives it power to issue "writs of habeas corpus which may be necessary for the exercise of its jurisdiction, and agreeably to the principles and usages of law;" and the same act expressly authorizes the judge of that court to grant writs of habeas corpns "for the purpose of inquiring into the cause of commitment; provided, that writs of habeas corpus shall in no case extend to persons in jail, unless where they are in custody under the authority of the United States or committed for trial before some court of the same, or are necessary to be brought into court to testify." Other acts of Congress give the United States Judges jurisdiction in writs of habeas corpus in cases therein specified. It does not appear that the writ issued for persons in jail, or in disregard of state process or state authority. It may be that in an action at law, where the judgment of a United States Court is relied on as a justification, the jurisdiction should be affirmatively shown. But in a writ of habeas corpus, issued by a judge having no appellate power over the tribunal whose judgment is shown as the cause of detainer, where the jurisdiction of the latter depends upon the existence of certain facts, the record being silent in regard

to them, and no objections to its authority are made on the hearing, the jurisdiction ought to be presumed, as against the party who might have raised the question at the proper time, but failed to do so. It is true, that if the jurisdiction be not alleged in the proceedings, the judgments and decrees of the United States Courts are erroneous, and may, upon writ of error or appeal, be reversed for that cause. But they are not absolute nullities. If other parties who had no opportunity to object to their proceeding, and who could not have writs of error, may regard them as nullities, it does not follow that the parties themselves may so treat them. *Kempe's Lessee* vs. *Kennedy*, 5 Cr. 183; *Skillern's Ex'r* vs. *May's Ex'r*, 6 Cranch, 267; *McCormick* vs. *Sullivant*, 10 Wheat., 192.

It is alleged that the right of property cannot be determined on habeas corpus. It is true that the habeas corpus act was not intended to decide rights of property, but the writ *at common law* may be issued to deliver an infant to a parent, or an apprentice to a master. *Com.* vs. *Robinson*, 1 S. & R., 353. On the same principle, I see no reason why the writ at common law may not be used to deliver a slave from illegal restraint, and restore him to the custody of his master. But granting, for the purpose of the argument, (which I am far from intimating,) that the district judge made an improper use of the writ,—that he erred in deciding that the prisoner refused to answer it,—that he also erred in the construction of the return which was made, and that he otherwise violated the rights of the prisoner, it is certainly not in my power to reverse his decision. He had clearly jurisdiction to try and punish contempts committed in the presence of the court, or by parties in disobeying its writs, process, orders, or decrees. See Act of Congress of March 2, 1831. If the Court had no jurisdiction of the writ of habeas corpus, that was merely matter of defence, to be urged on the trial of the charge of contempt. It touched not in the least the jurisdiction to try and punish for that offence.

If a writ of habeas corpus had issued from a state Court to the United States Marshal, and that court had adjudicated that the Marshal was guilty of a contempt in refusing to answer it, and had committed him to prison, the District Court of the United States would have no power to reverse that decision, or to release the Mar-

shal from imprisonment. No court would tolerate such an interference with its judgments. The respect which we claim for our own adjudications, we cheerfully extend to those of other courts within their respective jurisdictions.

For these reasons the writ of habeas corpus is refused.[1]

In the District Court of the United States, Northern District of California.[2]

CRUZ CERVANTES *vs.* THE UNITED STATES.

1. A grant by the Political Chief for the time being of Alta California, was not invalid, though it did not receive the previous approbation of the Territorial Deputation. The grant conveyed a present and immediate interest, and the neglect to obtain such approbation, if it were the duty of the grantee at all, would have been only the breach of a condition subsequent, by which the title was not forfeited.
2. In the same manner, conditions in such a grant, that the grantee should build and inhabit a house within a certain time, and also obtain judicial possession of the land, are conditions subsequent; and where, in a particular case, after the time limited, the grantee actually took possession of the premises, and had lived on them and cultivated them for three years, when he obtained judicial possession, which he maintained till the time of suit, a period of twelve years, it was held that the title had not been forfeited.
3. It is also no objection to such a grant (made in 1836) that the lands comprehended by it were within the limits of a mission.
4. It is, finally, no objection to such a grant, that the land was within ten leagues of the sea-coast, and that the approbation of the Supreme Executive did not appear to have been obtained.

The opinion of the Court was delivered by

McALLISTER, J.—"The Board of Commissioners to ascertain and settle the private land claims in the State of California," decided in favor of the validity of the claim of the appellant, from which decision the United States appealed to this Court, by whom the decree of the said Board of Commissioners was reversed, and a decree entered declaring the claim of the present appellant to be

[1] A subsequent application for habeas corpus was made to the Supreme Court in banc, which on the 8th of September, 1855, was refused, by a majority of the Court; KNOX, J., dissenting. We shall publish the opinion in our next number.

[2] Sitting for the Adjudication of Land Titles.